

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JULIA JOHNSON, JAMES ALLEN)
SANDERS, PAUL SEABURY,)
MATTHEW SINCLAIR, CATHY)
WILLIAMS, KENDRICKS DOUGLAS,)
TAMMY MCCALL AND BARRY)
ALFORD)
Individually and on behalf of the class they)
seek to represent,)
)
Plaintiffs,)
)
vs.)
)
FLAKEBOARD AMERICA LIMITED,)
)
Defendant.)

C/A No. 4:11-2607-TLW-KDW

**ORDER
and
REPORT AND RECOMMENDATION**

This matter is before the court on Plaintiffs' Counsel's Motion to Withdraw from Representation of Plaintiff Paul Seabury ("Motion") by Plaintiffs' Counsel ("Counsel"), ECF No. 86, and the court's October 10, 2012 Order requiring specific action by Seabury no later than October 19, 2012, ECF No. 97. Having received no response from Seabury, the court enters this Order and Report and Recommendation (Order and Report).

In the Motion, Counsel informed the court that, despite repeated requests, Seabury has failed to communicate with Counsel. ECF No. 86. Although Counsel served Seabury with the Motion, he did not file a response. On September 25, 2012, the court noticed a hearing on the Motion to begin at 10:00 a.m. on October 10, 2012. ECF No. 88. As instructed by the court, Counsel provided the Clerk of Court with Seabury's last known mailing address and telephone number. A copy of the Notice of Hearing ("Notice") was sent to Seabury's last known address by regular and by certified mail on September 25, 2012, ECF No. 91, and Seabury acknowledged receipt of the Notice that was sent by certified mail on September 27, 2012, ECF No. 93. The

Notice instructed Seabury to inform Counsel of a telephone number where he could be reached at the time of the October 10, 2012 hearing so that he could participate in that hearing. ECF No. 88. Although Seabury did not contact Counsel as instructed, the court convened the October 10, 2012 telephone hearing, with Counsel and defense counsel participating. Seabury did not participate, and the court is unaware of any attempt made by Seabury to contact the court or to otherwise arrange to participate in the hearing. At the beginning of the hearing, a deputy of Clerk of Court telephoned Seabury at the telephone number Counsel had for Seabury. Although Seabury did not answer the telephone call, voice-mail connected to that number indicated it was Seabury's telephone number. The deputy Clerk of Court left a voice-mail message instructing Seabury to contact the court as soon as possible; however, as of the date of this Order and Report, he has not done so.

After the hearing, the court issued a written Order that gave specific instructions to Seabury that required him to respond to the Motion and to the court's Order no later than October 19, 2012. ECF No. 97. On October 10, 2012, the Clerk of Court sent the Order to Seabury by regular and certified U.S. mail to his last known address. ECF No. 98. In the response, Seabury was to inform the court whether he wished to continue to participate as a plaintiff in this action.¹

To date, Seabury has not responded to the court's October 10, 2012 Order in writing or otherwise, nor has he responded to the voice-mail message left by the deputy Clerk of Court at the court's instruction. The October 10, 2012 Order specifically informed Seabury that, if he did not respond adequately, Counsel's Motion to Be Relieved would be granted and that it would be

¹ This matter began as a purported class action, and Seabury was one of the proposed class representatives. *See* Am. Compl. ¶¶ 6, 39-41, ECF No. 29. At the October 10, 2012 hearing, Counsel and defense counsel jointly informed the court that Plaintiffs were no longer pursuing class-action status in this matter. Accordingly, any continued participation by Seabury would be as an individual Plaintiff and not as a class representative.

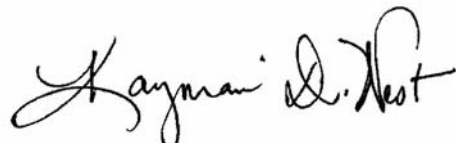
recommended that Plaintiff be dismissed from this case with prejudice for failure to prosecute. ECF No. 97 at 2-3.

Plaintiff has filed no response. As such, it appears to the court that he does not oppose the Motion and that he wishes to abandon his participation in this action. Based on the foregoing, Counsel's Motion to Be Relieved, ECF No. 86, is GRANTED. Seabury is no longer represented by Counsel. Further, based on Seabury's failure to participate in the October 10, 2012 hearing, and further based on his failure to respond to the court's October 10, 2012 Order, the undersigned recommends that Seabury be DISMISSED from this case as a Plaintiff, thereby ending his case with prejudice for failure to prosecute. *See Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b).

The Clerk of Court is ordered to send a copy of this Order and Report to Seabury at his last known address by certified mail and by regular mail.

IT IS SO ORDERED AND RECOMMENDED.

October 24, 2012
Florence, South Carolina


Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**